

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNETH JOHN RHULE,

Defendant.

NO. 20-cr-105 JCC

FIRST SUPPLEMENT TO DEFENDANT
RHULE'S MOTION TO REVIEW AND
REVOKE MAGISTRATE JUDGE'S
DETENTION ORDER AND RELEASE
DEFENDANT ON CONDITIONS

Defendant Kenneth John Rhule ("Mr. Rhule"), presently in custody pursuant to a detention order from Magistrate Judge Tsuchida, has moved the Court to review and revoke that order and release him on conditions under the supervision of Pretrial Services. *See* Dkt. No. 48.

Mr. Rhule is presently in custody at FDC SeaTac. Mr. Rhule's motion argued that one reason supporting release was the steadily increasing threat from COVID-19 that he faces in that facility. *See id.* at Sec. III.G (as of Wednesday, Aug. 19, there were 21 confirmed inmate COVID-19 infections and 5 confirmed staff members infected, with many other staff in quarantine).

1 Mr. Rhule hereby supplements his pending motion to advise this Court, which we
 2 understand is likely being informed otherwise by the judicial communication system, that those
 3 numbers of COVID-19 infections continue to grow significantly. The swelling number of
 4 positive test results reflects an ever-greater health risk for detainees. And the isolation and
 5 quarantine steps taken by the FDC in response to the outbreak, while understandable, have the
 6 consequence of undermining the detainees' constitutionally required access to counsel.

7 As reported to the undersigned by Federal Public Defender Michael Filipovic in the
 8 August 26 report to the federal court stakeholders' meeting, General Counsel for the FDC
 9 George Cho reported that the total number of infections is now 35 (4 staff and 31 prisoners).¹

10 This is a 34 per cent increase in COVID infections at the FDC in a single week.

11 At the detention hearing the government argued that the COVID mitigation procedures
 12 at the FDC SeaTac "are working" and that the FDC had this under control (with only one staff
 13 member and one inmate testing positive).

14 Since the time that this argument was made to the Magistrate Judge, there has been a
 15 **1,650 per cent increase** in the number of COVID-19 infections. This is far beyond what the
 16 government's argument suggested the magnitude of the potential exposure risk to Mr. Rhule
 17 might be, and likely also beyond what the Magistrate Judge anticipated that Mr. Rhule's
 18 exposure risk might be at the time of its decision at the detention hearing.

19 Mr. Cho further indicated to the stakeholders that it has been necessary to quarantine
 20 three entire additional units at the FDC. Mr. Cho further stated that between 200 and 300

21 _____
 22 ¹ This total figure (35 infections) is consistent with the information available today via the
 23 website of the Bureau of Prisons, although the BOP site indicates a breakdown of 5 staff and 30 prisoners
 who have tested positive for COVID-19. See <https://www.bop.gov/coronavirus/> (last visited August 27,
 2020).

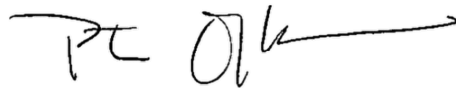
1 prisoners at present are “totally quarantined,” with 31 being held in isolation. In his estimation,
2 half the SeaTac facility is either quarantined or in isolation.

3 Mr. Cho also indicated in his report to the federal court stakeholders that individuals
4 housed in those newly quarantined units can communicate with counsel only by phone, and not
5 by video.

6 This is all new information that could not have been before the Magistrate Judge at the
7 time of his detention decision, that this Court should consider in ruling on the motion for review
8 of the detention order, and for release of Mr. Rhule on conditions.

9 For the foregoing reasons, as well as all those set out in more detail in Mr. Rhule’s
10 motion (Dkt. No. 48), the Court should review and revoke the Magistrate Judge’s order
11 detaining Mr. Rhule, and release Mr. Rhule on conditions under the supervision of Pretrial
12 Services.

13 Dated this 27th day of August, 2020.

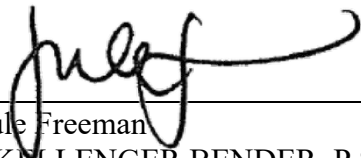
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16 Peter Offenbecher, WSBA No. 11920
17 SKELLENGER BENDER, P.S.
18 Attorneys for Kenneth John Rhule
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CERTIFICATE OF SERVICE

I, Jule S. Freeman, certify that on August 27, 2020, I electronically filed the First Supplement to Defendant Rhule's Motion to Review and Revoke Magistrate Judge's Detention Order and Release Defendant on Conditions with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

DATED this 27th day of August, 2020.



Jule Freeman
SKELLENGER BENDER, P.S.
Case Analyst